

**Blue Ribbon Advisory Panel**  
**-Meeting Minutes-**  
**November 14, 1996**  
**Northwestern Indiana Regional Planning Commission Building**  
**6100 Southport Road**  
**Portage, Indiana 46368**

The Blue Ribbon Advisory Panel held its second meeting on November 14, 1996. The Panel was constituted to consider issues associated with the Lake Michigan coastal area raised by public work groups held in the spring of 1995, as well as additional issues of interest to the Panel. Beginning the meeting at approximately 9:10 a.m., CST.

Approval of Meeting summary for October 17, 1996

Steve Lucas reintroduced Dawn Deady, Coordinator of the Lake Michigan Coastal Program, Jim Hebenstreit of the DNR Division of Water, and himself. He introduced Andrea Gromeaux who would act as facilitator for the meeting. Lucas then brought the members attention to the October 17, 1996 Meeting Summary. He asked if there were any additions or corrections. There were none, and the summary was approved by consensus.

Andrea Gromeaux then commenced a facilitated session. She asked the members present to introduce themselves. The following persons were present:

Tom Anderson, Save the Dunes Council  
Robert Bilheimer, Bethlehem Steel  
Michael Bucko, Porter County Council  
Shiv Baloo, proxy for Julie Murphy, Amoco Oil Company  
Ernest Niemeyer, Lake County Commissioner  
Russell Taylor, proxy for Robert Pastrick, Mayor of East Chicago  
Chuck Siar, Chair of the Natural Resources, Shorelines, and Water Quality Public Workgroup  
Ray Sierra, International Longshoremen's Association  
J.B. Smith, Chair of the Marina, Public Access, and Recreational Uses Workgroup  
Bill Theis, Private Property Rights and Pine Township Trustee

Others present at the meeting included:

Andrea Gromeaux, facilitator, Department of Natural Resources  
Dawn Deady, IDNR, Lake Michigan Coastal Coordination Program  
Stephen Lucas, Natural Resources Commission, Hearings  
James Hebenstreit, IDNR, Division of Water  
Bob Kasarda, Chesterton Tribune  
Barbara Waxman, Northwest Indiana Regional Planning Commission

Next Gromeaux inquired if there were any amendments to the agenda. No amendments were offered, and the meeting proceeded as outlined in the agenda.

Gromeaux reviewed the mission statement and basic roles of the participants for the facilitated session. She affirmed that the "ground rules" developed during the prior meeting had worked to the satisfaction of the members. She returned the floor to staff of the DNR and the NRC to update the members of the Blue Ribbon Advisory Panel on information gathered in response to the Panel's requests.

**Review of Requested Information Regarding Primacy and Joint Permit Applications** Steve Lucas opened this discussion. He said the presentation would be very informal and asked that panel members feel free to ask questions or make comments at any time. He said that the intent was to provide as much information, as quickly as possible, with the facilitated session to resume at the conclusion of the presentation.

Lucas directed the attention of the members to a handout, "Models for Additional Coordination and Streamlining" (Draft: November 8, 1996). He said that Deady, Hebenstreit, and he had each talked with representatives outside Indiana state government regarding programs and opportunities for permit streamlining. Lucas spoke specifically to Section 404 primacy programs in Michigan and New Jersey and to Great Lakes states approaches to primacy under the Underground Injection Control Program. He explained that Indiana had primacy only for Class II wells; these assist in the production of oil and gas and are of importance mostly to southwest Indiana. Ernie Niemeyer asked why Indiana had not sought primacy for Class I or Class III through Class V wells. Lucas responded that he did not know but would seek a response from IDEM. Lucas also spoke about the Wisconsin initiatives to develop General Programmatic Permits for waterway construction activities. He said a new Wisconsin effort would have large projects (those affecting more than three acres of waterway) handled exclusively by the federal government, and small exclusively by the state agency with the Corps issuing a General Programmatic Permit.

Deady spoke about streamlining efforts by the Pennsylvania Department of Natural Resources and Pennsylvania Department of Environmental Resources. She provided a description of the intensive process Pennsylvania undertook to reduce a backlog of permits and simplify the permit process.

Deady also reviewed the streamlining effort in Washington. Several local, state, and federal units of government have adopted a uniform permit application for activities conducted along the state's waterways and shorelines.

Hebenstreit outlined initial contacts with the U.S. Army Corps of Engineers. He said a meeting was set for November 19 to help better understand current state and federal responsibilities for permitting in and along waterways. Hebenstreit

noted that three separate Corps offices, those in Chicago, Detroit, and Louisville, had responsibilities in Northwest Indiana; he said the hope was the meeting would help better identify what these responsibilities are. Hebenstreit said the intention was also to begin a dialog directed to possible 404 primacy issues and to opportunities presented by Programmatic General Permits.

Shiv Baloo asked whether the Pennsylvania process would now require that a person apply both to the state and to the Army Corps for a waterway permit. Deady responded that the Pennsylvania effort was not directed to coordination with the federal government but rather to streamlining processes within the state. Lucas added that Wisconsin described its process as permitting with agency actions "behind the curtain." His understanding was that a single application would be made, but Wisconsin would undertake the photocopying and transferring of documents to the Corps. If the Army Corps had questions, his assumption was those discussions would take place directly between the applicant and the Corps.

Michael Bucko asked whether an applicant in Washington state would be required to apply for all permits, even if the applicant was not required to obtain all permits. Deady responded that the application included a check-list, and the applicant would contact the individual agency if questions were necessary.

Facilitated Session on Permit Streamlining Gromeaux then resumed the facilitated session. She asked the panel members for their perspectives. Niemeyer said there were too many inconsistencies with how state and federal governments administer regulatory programs. Russell Taylor suggested the Pennsylvania streamlining effort was a good model to begin discussion. The roles of agencies should be evaluated.

Ray Sierra suggested the development of a handbook to assist with the permitting process. A single point of contact would be helpful to corporate and individual citizens required to obtain a permit. The best should be taken from each of the streamlining processes described in the handout.

Baloo reflected upon the Wisconsin model. He said having the state process permits for smaller projects, leaving the larger projects to exclusive federal control, seemed to show promise. He suggested that the Army Corps and the EPA were unlikely, as a practical matter, to divest themselves of authority over large projects.

Tom Anderson emphasized that any state program would have to be as effective as its federal counterpart in order for the state to act as the exclusive permitting authority, whether that effort takes the form of primacy or a Programmatic General Permit. He said streamlining could not mean divesting governmental responsibility for providing environmental safeguards. Where current state law

was inadequate to assume a federal program, that might mean passing new state statutes or adopting new state agency rules.

Bill Theis responded that "common sense" should prevail. There might be occasions where adopting a few new state laws would have the effect of relieving citizens from the burden of double permitting requirements. In those instances, developing state programs could have a positive effect. Each instance should be evaluated on its own merits.

Sierra reflected upon problems created by inconsistencies between laws and agency policies. Chuck Siar said he had experienced great difficulties understanding what Army Corps policies were for its administration of Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Taylor described similar difficulties. Theis said the public needed to be able to identify agency policies, and those policies must be consistent with law. Several members of the panel reflected that agency policies needed to be clarified and put in writing.

Robert Bilheimer suggested that primacy was the most effective method for assuring regulatory activities would be performed by persons knowledgeable of Indiana conditions and accessible to Indiana citizens. He recommended the panel review the feasibility of obtaining primary enforcement authority for those programs where primacy had not already been obtained.

Sierra asked how the federal government would allow the states to take over a federal program and reduce opportunities for persons other than a license applicant to have a say in the process. Lucas responded that when a state seeks primacy, one of its assurances is that participation in the process by others would not be thwarted. For example, if an Illinois corporation had a right to comment on a permit when administered by a federal agency, the equivalent right must also ordinarily exist following primacy.

Russell Taylor said it was important to include the Congressional delegations in any discussion of governmental streamlining, particularly if melding federal and state regulatory programs was being considered. With the Army Corps of Engineers and other federal agencies downsizing, and with the new emphasis upon administration at the state rather than federal level, it was important that Northwest Indiana seek to be ahead of the wave.

Tom Anderson said that cost must be a major consideration, whether Indiana was looking to primacy or another process by which the state assumed the regulatory responsibility from the federal government. Bucko also reflected that the state would have to factor financial considerations. It was noted that Section 404 primacy did not include federal financial assistance, although primacy for the Underground Injection Control program and other types of primacy sometimes did.

## Recommendations Concerning Permit Streamlining

The Panel then proceeded to the development of recommendations concerning permit streamlining. Bilheimer suggested that a permit-streamlining effort should be custom-made for Northwest Indiana which incorporated a breadth of techniques discussed from other states. J. B. Smith reflected that a thorough understanding of legal requirements and options for streamlining was essential, as was an understanding of the kinds of challenges faced by applicants. The Panel then developed a general statement of direction for permit streamlining:

The Panel recommends exploring the expansion of primacy where possible, seeking primacy where allowable under the law, and where needed, studying general permits and other streamlining processes.

In order to implement a streamlining effort in Indiana, Taylor suggested that an analysis was needed which reviewed primacy, joint permitting, and other efforts to conditions in Indiana. Theis said he thought he currently lacked sufficient information upon which to make a recommendation for action which was specific to Indiana. Bilheimer offered that it would be a helpful starting point for discussion if Dedy, Lucas, and Hebenstreit would fashion a model for implementation. Sierra said it would be helpful for the Panel to understand what a permit applicant goes through; he suggested that examples of applications for permits from the private-sector, for an industrial or commercial activity, and from a municipality should be included. A general consensus was achieved, and the Panel directed that DNR and NRC staff review suggestions made by the Panel for streamlining. Written materials would be distributed by January 15, 1997, to do the following:  
Provide examples of joint permit applications from other states.  
Perform an analysis of primacy, single point of contact, joint permitting, general permitting, and other streamlining techniques.  
Provide examples of permitting processes for shoreline or waterway activities from each of the following:

private sector

industrial or commercial sector

municipal sector

These processes should "start at the ground level" and be provided in chronological order.

Design a model for implementation in Indiana.

## Discussion of Directions of the Blue Ribbon Advisory Panel

The Panel then proceeded to a discussion of its future directions and what it might do to appropriately implement the mission statement. J. B. Smith noted that the original request for participation on the Panel from DNR Director, Patrick Ralston, said there would be one or two meetings. While Smith always felt that

schedule was very optimistic considering the extent of issues reviewed in the public workgroup process, the current pace would likely extend the Panel "to the next millennium."

The Panel then reviewed the matrix showing the ranking of the 15 subjects included in Northwest Indiana Public Work Groups: A Synthesis of Major Topics in the Lake Michigan Coastal Area in an effort to develop a reasoned approach to their review process. Bilheimer suggested that the Panel review the five subjects with the greatest interest, as indicated on the matrix and reflective of voting by its members. Taylor noted that there was a three-way tie for the subject which ranked fifth. Baloo urged that the Panel continue to apply the "Perspectives" subparts from each subject in order to make most-efficient use of time and human resources. Taylor suggested that the Panel invite experts to speak on the chosen topics. Siar expressed dissatisfaction that all issues would not be considered by the Panel if only the five receiving the most votes were included. The Panel committed to the following approach for future meetings: The Panel would participate in as many meetings as needed to address significant aspects of the five highest-ranked subjects. These subjects are Streamlining and Governmental Coordination; Water Quality; Wetlands and Drainage; Economic Development; and, Tie among:  
(A) Lake Michigan and Navigable Tributaries;  
(B) Property Rights; and,  
(C) Coastal Coordination Program.

#### Scheduling of Next Meeting

The Panel agreed to schedule the next meeting for January 23, 1997 at 9:00 a.m., CST in the Offices of the Northwestern Indiana Regional Planning Commission, 6100 Southport Road, Portage, Indiana. The first two hours would be dedicated to a discussion of permit streamlining. The final two hours would introduce the subject of economic development, including the possibility of a brief presentation by an expert. The meeting would adjourn at approximately 1:00 p.m., CST. The DNR will provide advance notice of the meeting to the media, but with the clarification that the meeting is not intended as an open public forum. The meeting adjourned at approximately 12:30 p.m., CST.